NATIONAL ASSOCIATION OF HOME BUILDERS

FEDERAL REGULATORY & HOUSING POLICY AREA

DAVID A. CROWE
Senior Staff Vice President

April 6, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1181

Dear Ms. Johnson:

On behalf of the 215,000 member firms of the National Association of Home Builders (NAHB), I appreciate the opportunity to respond to the request for comment, issued jointly by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (the Agencies), on proposed revisions (Proposal) to the Community Reinvestment Act (CRA) regulations.

NAHB strongly supports the goal of the CRA, which is to encourage federally insured banks and thrifts to help meet the credit needs of their entire communities. NAHB commends the Agencies for their efforts to evaluate whether their CRA implementing regulations remain contemporary with the evolution of the financial services marketplace. When the Agencies initiated their public rulemaking by issuing an Advance Notice of Proposed Rulemaking (ANPR) in 2001, NAHB submitted comments recommending changes to address gaps in the present system, specifically some components of the performance-based evaluation process and the determination of assessment areas. NAHB also urged the retention of the current requirements for data collection and reporting as well as maintenance of public files.

NAHB Position

NAHB reaffirms the observation conveyed in our response to the Agencies' ANPR that many segments of this country have not benefited from advances in the operational, competitive, and legal structure of the financial services sector. Many rural communities in particular continue to be overlooked and do not receive adequate levels of financial services. For example, NAHB members report instances where several banks in proximity to an underserved community declined to finance proposed housing projects because that community was not considered to be in their assessment areas. Apparently, the financial institutions felt no incentive to lend in communities considered outside of their assessment areas since they would probably not receive CRA credit for such lending.

NAHB is disappointed that the Agencies' Proposal does not actively address our concerns. However, NAHB is encouraged that additional guidance to further clarify the CRA regulations is anticipated by the Agencies. NAHB requests that the Agencies place a high priority on issuing guidance to clarify the performance-based evaluation of lending, investment and service activities. NAHB further believes that it is equally important to clarify the rules covering the delineation of CRA assessment areas. NAHB's recommendations for such changes are detailed below.

Evaluating Lending, Investment and Service Activities

The current performance-based tests provide incentives for an institution to provide financial services and products in low- or moderate-income geographies. NAHB believes this income-specific measure for whether a particular community merits targeting for CRA purposes precludes the use of other equally valid benchmarks for defining underserved areas. For example, current regulations provide no incentives that reflect an institution's activity in rural areas. NAHB understands that many projects intended to revitalize or stabilize rural communities do not qualify under the current regulatory definition of community development because those activities are not located in low- or moderate-income geographies, as defined in the regulations. This is also true in the service test, where the Agencies consider an institution's branch distribution among geographies of different income levels, with particular emphasis on low- and moderate-income geographies.

NAHB believes that additional factors should be used to determine whether a community has less than adequate access to financial services. Unfortunately, the Proposal retains the current regulations' ineffective income-specific focus because the Agencies' cite difficulties in incorporating "qualitative" measures of an institution's efforts to meet the credit needs in geographic areas that an institution can be reasonably expected to serve. Instead, the Agencies indicate that they may seek to clarify through interagency guidance how qualitative considerations should be employed.

NAHB believes it is imperative for the Agencies to issue interagency guidance in order to strengthen this part of the CRA examination by providing greater CRA credit for initiatives that serve geographies that previously did not have adequate access to credit. NAHB believes such guidance should encourage institutions to establish branches or lending relationships in more difficult to serve areas.

Assessment Areas

Federally insured financial institutions must define one or more assessment areas, which is the geographic area where the Agencies will evaluate an institution's record of meeting the credit needs of its community. The Agencies do not review the institution's delineation as a separate performance criterion. However, the regulations provide that the assessment areas must consist generally of one or more metropolitan statistical area (MSA) or one or more contiguous political subdivision in which the financial institution has its main office, branches, and deposit taking ATMs. Additionally, large and small banks must include surrounding geographies where the financial institution has originated or purchased a substantial portion of its loans. Consistent with the CRA regulations, a financial institution may adjust the boundaries of its assessment areas to include only the portion of a political subdivision that it can reasonably expect to serve. However, the regulations provide that assessment areas can only consist of whole geographies, should not illegally discriminate, must not exclude low- or moderate-income geographies and may not extend substantially beyond a state boundary unless the assessment area is located in a multi-state MSA.

NAHB believes that this portion of the CRA regulations also has not been effective in ensuring that banks and thrifts address credit needs in areas that are more difficult to serve, such as rural and other underserved communities. Institutions have been able to define their assessment areas in ways that have left gaps in access to financial services. In fact, NAHB believes the regulation's approach to assessment areas may create disincentives for financial institutions to provide financial services to low- and moderate-income communities and rural areas where they have no physical presence and are not part of their self-determined assessment areas.

NAHB therefore requests that the Proposal be revised by incorporating a provision that requires institutions to delineate assessment geography wherever they deliver retail-banking services, whether or not they have physical deposit-gathering branches or ATMs in each locale. In addition, the Proposal should include an institution's delineation of its assessment area as a performance criterion to determine if the institution is meeting the credit needs of the community. NAHB suggests the Agencies also amend the Proposal so that the assessment areas of financial institutions are influenced by the locations of business and household customers in nearby geographic areas consisting of rural and other underserved areas.

NAHB also believes that financial institutions should have less discretion in determining which geographic areas should be included in their assessment areas. Current CRA regulations allow financial institutions to basically carve out the areas they choose to serve. While institutions are not permitted to arbitrarily exclude low- or moderate-income communities from their assessment areas, there is no similar prohibition to excluding rural areas. Further, the current CRA process does not address circumstances where rural areas are consistently left out of every assessment area. NAHB believes that the Proposal should be amended to require such an evaluation and to require institutions that are engaging in such practices to include rural areas in their assessment area delineation.

Finally, NAHB believes that the Agencies should increase the level of consideration given to a financial institution's community development investments, loans and services in underserved locations outside of their assessment areas. Current Agency guidance indicates that community development investments, services and loans provided outside of an institution's assessment area will be considered, but only if the institution has adequately addressed the needs within its assessment area. This becomes a problem when it is applied to a financial institution with a borderless service area but a limited physical business platform. Such entities include limited purpose and wholesale financial institutions and other large financial institutions. The CRA regulations confer no duty on these institutions to invest, serve or lend beyond their assessment area. Rather, they are only obliged to meet the credit needs of a relatively small geographic area even though they may offer financial services on a nationwide basis. As more financial services are provided electronically and via the Internet, the divergence between physical location and service area will continue to increase.

In the Proposal, the Agencies conclude that such problems are a result of the manner in which the CRA regulations are implemented rather than the regulations themselves. To be sure, the Agencies recognize the challenges inherent in directing community development resources to underserved areas. Moreover, NAHB appreciates the efforts of the Agencies to encourage financial institutions to look beyond their CRA assessment areas for lending and investment opportunities. However, NAHB believes that more can be done in this area. Therefore, NAHB endorses the Agencies' commitment to issue clarifying guidance on when community development activities outside of assessment areas will be weighted as heavily as activities inside of assessment areas. NAHB further encourages the Agencies to clarify this issue in a way that provides ample incentive for financial institutions to serve rural and other underserved areas.

Data Collection and Reporting and Maintenance of Files

Currently, financial institutions are required to disclose the number and amount of their small business and small farm loans on an aggregated basis across a series of income categories. The Proposal would require this data to be disaggregated and reported by census tract. NAHB endorses the Agencies' proposal to enhance the CRA data reporting requirements. Reporting the specific census tract location of small businesses and farms receiving loans will assist in the assessment of a financial institution's CRA responsibilities without creating an undue burden for that institution.

Conclusion

NAHB appreciates the Agencies' efforts to ensure that the CRA implementing regulations continue to channel the resources of financial institutions to underserved areas. NAHB hopes that you will consider our recommendations to enhance the Proposal or supplement it with additional interagency guidance. Thank you again for the opportunity to comment. NAHB is available to answer any questions you may have concerning this statement or provide any additional information that may be needed.

Sincerely,

David Crowe

David A. Crowe
Senior Staff Vice President